



**Information and Privacy  
Commissioner/Ontario**  
**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER P-1251**

**Appeal P-9600209**

**Ontario Securities Commission**



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## **NATURE OF THE APPEAL:**

The Ontario Securities Commission (the OSC) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to certain records relating to an investigation which it undertook between 1979 and 1984. The requester was an investor in a real estate development whose investment was lost in the financial collapse of Argosy Financial Group of Canada Ltd. (Argosy). Specifically, the requester is seeking access to a copy of a mortgage between the developer and a named insurance company, copies of cheques which passed from the insurance company to the developer and the names of the individual investors in this project.

The Ministry of Finance (the Ministry), on behalf of the OSC, responded by advising the requester that no records responsive to his request exist. The requester, now the appellant, appealed the Ministry's decision. A Notice of Inquiry was provided to the appellant and the Ministry. The Ministry was requested to provide an affidavit from the individual(s) who conducted the search(es) for records responsive to the appellant's request. Representations were received from the Ministry only, on behalf of the OSC, though no affidavit from the individual who conducted the search was provided. The sole issue in this appeal is, accordingly, whether the OSC's search for records responsive to the request was reasonable in the circumstances.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

With its representations, the Ministry submitted a memorandum dated August 9, 1996 from the Manager, Case Assessment/Investigative Services of the OSC's Enforcement Branch to the Secretary to the Commission in which she states that the Exhibits Officer conducted searches of the OSC's registration and investigation files on April 19, 1996 and July 16, 1996 but did not locate any records which relate to the request. In addition, two short memoranda were enclosed from the Exhibits Officer advising that he was unable to locate any records responsive to the request.

In cases where a requester provides sufficient details about the records which he is seeking and the Ministry indicates that records do not exist, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Ministry to prove with absolute certainty that records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate responsive records.

In his request letter, the appellant described in very specific terms the documents which he is seeking. The request involves records which formed part of a major investigation by the OSC. The Ministry's Assistant Freedom of Information and Privacy Co-ordinator advised the Appeals Officer that OSC records are maintained for a period of 30 years.

I find, however, that the Ministry has not provided sufficiently detailed information as to the searches which were undertaken. I have not been informed as to whether files relating to Argosy or the developer were located and examined or whether any such files exist. Nor have I been

provided with any information as to the nature and extent of the search of the files relating to Argosy or the developer, if such files exist or a reasonable explanation as to why the OSC does not have copies of the records requested.

In my view, based on the information provided to me by the Ministry, the searches undertaken for records responsive to the appellant's request were not reasonable, and the Ministry did not satisfy its obligations to the appellant under section 24 of the Act.

**ORDER:**

1. I order the OSC to conduct a further search for records responsive to the appellant's request and to communicate to the appellant the results of that search within twenty-one (21) days of the date of this order.
2. If, as a result of this further search the OSC locates any responsive records, I order it to provide the appellant with a decision letter regarding access to such records within twenty-one (21) days of the date of this order.
3. In order to verify compliance with the terms of this order, I order the OSC to provide me with a copy of the correspondence referred to in Provisions 1 and 2 by **September 18, 1996**. Copies of this correspondence should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ August 28, 1996